

Key issues at COP 21 on the Paris Agreement

30 Nov, Paris (Meena Raman) - The Paris agreement is expected to be the most important outcome of the 21st meeting of the Conference of Parties (COP 21) to the UNFCCC, to be held from November 30 to December 11.

The negotiations taking place under the Ad hoc Working Group on the Durban Platform for Enhanced Action (ADP) has two workstreams – one to deliver the Paris Agreement, which is to come into effect post-2020 under workstream 1 and the other, a decision on workstream 2 which deals with pre-2020 actions.

Under the Paris Agreement, negotiations will focus on a 31 pages document which comprises the draft agreement and a 19 page accompanying decision.

At the last session of the ADP in Bonn, Germany, in October, developing countries led by the G77 and China, rejected a non-paper produced by the ADP Co-chairs for the negotiations, as the document was found to be “unacceptable, unbalanced and lop-sided”. This led to many proposals from developing countries for insertion into the document in order to rebalance the texts. Developed countries also submitted proposals to the document, which led to the current document for Parties to begin negotiations in Paris.

The work of the ADP will commence on Sunday, 29 November (before COP 21 officially opens) and is expected to conclude its work on Saturday, 5 December, with the production of a revised draft agreement and accompanying decision for transmission to the COP for its eventual adoption.

In effect, negotiators have less than 5 days to arrive at an agreement under the ADP in the first week of the Paris talks. Issues that are not able to be resolved by then are expected to be

considered by Ministers in the second week, which begins on Monday, 7 December.

In the current text for negotiations, there are proposals on several key issues that reflect clear divergences between developed and developing countries. Whether resolution will be found to ensure an agreement, which is equitable and fair remains to be seen.

There is no expectation for an ambitious outcome that would ensure that Parties are on track to limit temperature rise to less than 2°C from pre-industrial levels, let alone 1.5°C.

The present temperature has now exceeded by 0.8 degrees. Global emissions are increasing by about 50 billion tonnes a year. The remaining “space” in the atmosphere to absorb more emissions (before the 2 degree limit is reached) will be exhausted in 20-25 years or so.

However, judging from what developed countries in particular have conveyed through their intended nationally determined contributions (INDCs) on their emission reduction targets for the post-2020 timeframe, we are far away from limiting temperature rise to less than 2 degree C.

In fact, a recent review by civil society organisations of the INDCs of Parties shows that developing countries are doing their fair share, while developed countries are far away from meeting their targets from a historical and equity perspective. (See <http://www.twn.my/title2/climate/info.service/2015/cc151106.htm>).

The NGOs involved in the study include ActionAid International, Asian Peoples Movement on Debt and Development, Center for International Environmental Law, Christian Aid, CIDSE, EcoEquity, Friends of the Earth International, International Trade Union

Confederation, LDC Watch International, Oxfam, Pan African Climate Justice Alliance, Third World Network, What Next Forum, and WWF

According to the review, a country's fair share depends on two factors: its historical responsibility, (i.e. its contribution to climate change in terms of cumulative emissions through the years), and capacity to take climate action, using national income over and above what is needed to provide basic living standards as the principal indicator.

The key findings of the study include:

- Together, the commitments captured in INDCs will not keep temperatures below 2°C, much less 1.5°C, above pre-industrial levels. Even if all countries meet their INDC commitments, the world is likely to warm by a devastating 3°C or more, with a significant likelihood of tipping the global climate system into catastrophic runaway warming.
- The current INDCs represent substantially less than half of the reduction in emissions required by 2030.
- The ambition of all major developed countries falls well short of their fair shares, which include not only domestic action but also international finance. Those with the starkest gap between their climate ambition and their fair shares include:
 - Russia: INDC represents zero contribution towards its fair share;
 - Japan: INDC represents about one tenth of its fair share;
 - United States: INDC represents about a fifth of its fair share;
 - European Union: INDC represents just over a fifth of its fair share.
- The majority of developing countries have made mitigation pledges that exceed or broadly meet their fair share, but they also have mitigation potential that exceeds their pledges and fair share.
- Most developed countries have fair shares that are already too large to fulfill exclusively within their borders. The remainder of their fair shares must therefore be accomplished by enabling an equivalent amount of emissions reduction in developing countries

through financing and other support. This accounts for almost half of the reductions that need to take place globally, which indicates the need for a vast expansion of international finance, technology and capacity-building support.

Hence, the challenge in the Paris deal is whether developed countries will agree to not only taking the lead in cutting their emissions adequately and according to the "fair shares", but also in providing the means to developing countries to undertake sufficient climate actions.

The test in Paris will be whether the agreement concluded will still be able to save the planet and the poor of the world in a timely fashion, with the right kind of 'enablers' for more ambition in the coming years, which is both equitable and fair.

This will indeed be a huge challenge, given the many complex and divergent positions that remain to be solved in so short a time.

What are the key issues that need to be resolved?

1. Differentiation

A key issue throughout the Paris agreement is whether and how the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) will be operationalised in all the elements of the agreement.

The application of this principle in all the elements of mitigation, adaptation, the means of implementation and the transparency framework is expected to be deeply contentious.

Developed countries have been insisting that the agreement must reflect the "evolving economic and emission trends" of countries in the post-2020 timeframe, while developing countries continue to argue that given the historical emissions of developed countries, developed countries continue to bear the responsibility in taking the lead in emission reductions and in helping developing countries with the provision of finance, technology transfer and capacity-building as provided for under the UNFCCC.

It must be recalled that in Lima, at the last COP, Parties underscored their commitment to reaching an ambitious agreement in 2015 that reflects the principle of CBDR-RC, in light of different national circumstances.

2. Will the agreement be mitigation-centric?

Another underlying and very fundamental issue is whether the purpose of the Paris agreement will be to enhance the implementation of the Convention provisions in all the elements (mitigation, adaptation, finance, technology transfer, capacity building and transparency) as demanded by developing countries, or if it will be mainly a mitigation-centric agreement as preferred by developed countries.

The ‘battle’ over the nature of the agreement is located in Article 2 bis of the current negotiating text under the heading of ‘general’.

The proposal in Article 2 bis is from the Like-minded developing countries (LMDC) for all Parties to regularly prepare, communicate and implement their INDCs/NDCs towards achieving the purpose of the agreement/objective of the Convention. It also states further that the INDCs will represent a progression in light of Parties’ differentiated responsibilities and commitments under the Convention. It also includes a provision that successive INDCs will be communicated by Parties before the expiry of the previous contributions. (Parties have communicated either a 5 or 10 year contribution).

The other option in relation to Article 2 bis proposal is from developed countries not to have a text in this regard.

The proposal by the developing countries is to ensure that the contributions of Parties are viewed in a comprehensive manner, reflecting the respective obligations they have under the provisions of the Convention, and not to confine the contributions only to mitigation as desired by the developed countries.

Since the Warsaw COP in 2013, where the notion of INDCs was born, developed and developing countries have expressed a difference of views on what the INDCs should contain. Attempts by developed countries to define INDCs as only mitigation contributions were thwarted in Lima last year. For a large number of developing countries, the INDCs of developed countries are also supposed to reflect the contributions they will make on finance and technology transfer in addition to what they will do on mitigation as set out in the Convention and for developing countries, their contribution could be mitigation and adaptation, coupled with

an indication of their financial, technology and capacity building needs.

Hence, the Article 2 bis proposal is to provide for this comprehensive notion, and for progression to be shown on all the elements and not just limit this to only mitigation.

The ‘battle’ is also evident in how the mitigation contribution is termed as developed countries in Article 3 (on mitigation) prefer the notion of a ‘nationally determined mitigation contribution’ (NDMC), while developing countries want to use the term ‘nationally determined mitigation component of the contribution’ (NDMCC).

3. Will the Paris agreement be legally binding?

A major question is whether the Paris agreement will be legally binding, like for example the Kyoto Protocol.

While the Paris agreement can be legally binding, what commitments in respect of the various elements are actually legally binding depends on the precise language and their content in the final outcome. This has to be viewed in the context of each element. The test is whether the elements amount to actual commitments for Parties or are mere best endeavour clauses. Hence, the devil is in the detail.

4. Global goal

The ‘collective long-term global goal’ which is currently mitigation centric is reflected in the mitigation section of the agreement under Article 3. However, there is also a proposal under Article 2, under the heading of ‘purpose’ of the agreement.

Under the ‘purpose’, there are two options – one reflecting the option of having no text and the other which has the option of holding the increase in the global average temperature of below 2 degrees C, or below 1.5 degree C; as well as to pursue a transformation towards sustainable development, to foster societies that are resilient to climate change and economies that are low in greenhouse gas emissions (GHGs) and to ensure food production and distribution is not threatened as well as to increase the ability of Parties to adapt to the adverse impacts of climate change and to effectively respond to the impacts of the implementation of response measures and loss and damage.

In Cancun in 2010, Parties already recognised the need for deep cuts in emissions so as to hold the increase in global average temperature below 2 °C above pre-industrial

level. Whether the Paris agreement will reflect the 1.5 degree C limit remains to be seen.

Under Article 3 on the ‘collective long-term goal’ in relation to mitigation, there are 3 options. The first option refers to notions of low carbon/emission transformation, climate or carbon neutrality, peaking of emissions by a certain time frame, reduction in net emissions of a certain percentage below 2010 levels by 2050; or reductions according to the distribution of a global carbon budget based on climate justice as well as net zero emissions over the course of the century.

The 2nd option is for Parties aiming to reach long-term global low-emission transformation, in the context of sustainable development and equitable access to atmospheric space.

The 3rd option has a number of sub-options including a reference to the long-term temperature goal referred to in Article 2; a rapid reductions of emissions by certain percentages; and decarbonisation of the global economy over the course of this century (the latter is a proposal from the United States).

With so many sub-options, negotiating a mitigation goal has proved to be difficult in the past since the Bali Action Plan in 2007, without the link to other goals on adaptation, finance and technology transfer.

Developing countries have been pushing for goals or a long-term vision on the other elements as well.

In the adaptation section under Article 4, the first para relates to the issue of a goal/or long-term vision on adaptation, which is viewed by many developing countries as an important idea to ensure parity between a long-term perspective in relation to mitigation and adaptation. The G77 and China has called for a global goal or long-term vision which inter-alia, covers an assessment of the adequacy of support from developed countries to developing countries; that recognises the adaptation efforts of developing countries and the recognition of increased adaptation needs and associated costs in light of mitigation efforts. There is a proposal for no text in this regard from developed countries.

As regards finance, the G77 and China has made a proposal for the provision and mobilisation of financial resources from developed countries to be scaled up from a floor of US100 billion per year from 2020, including a clear burden-sharing formula among them, with a clear road map with individual annual targets in the post-2020 period. This proposal does not indicate a clear number for the financial target post-2020 as developed countries are opposed to having any numerical figure. Whether developed countries will accept a scaling up of resources from the US100 billion per year from 2020 remains to be seen.

In relation to technology development and transfer, the LMDC has called for the establishment of a global goal on the transfer of technologies by developed countries’ and know-how as well as in providing financial resources for collaborative research and development of environmentally sound technologies and enhancing accesses of developing countries to such technologies that match technology needs of developing countries. The developed countries have resisted this and have called for no text in this regard.

5. Mitigation (Article 3)

a) Efforts to be undertaken

On the mitigation element, in terms of the efforts to be undertaken, the text generally provides that Parties will regularly prepare/communicate/implement their INDCs/ NDC or NDCMC. One option reflects the principle of CBDR-RC in this regard while the other does not.

A key issue to resolve is whether the commitment includes the implementation of the mitigation contribution or if it is just to communicate the contribution. In issue is whether the United States (US) can make a commitment internationally to implement its emission reduction target.

Also in issue is how the mitigation efforts among Parties will be differentiated with the following options on the table:

- The first option is for no text on ‘differentiated efforts’; which means Parties ‘self-differentiate’ among themselves, which is an option preferred by the Umbrella Group of countries in particular;
- the second option is for differentiation between developed and developing

countries with developed countries undertaking quantified economy-wide absolute emission reduction commitments/targets, which are comparable, measurable, reportable and verifiable, covering all GHGs and implemented domestically without any conditions and developing countries undertaking diversified enhanced mitigation actions/efforts in a measurable, reportable, and verifiable manner, in the context of sustainable development and supported and enabled by the provision of adequate finance, technology and capacity-building by developed country Parties. This is a proposal from the LMDC;

- the third option is to follow the Lima formula which is that the efforts are in accordance with CBDR-RC, in the light of national circumstances; and
- the fourth option is a proposal from Brazil which essentially proposes that each Party that has previously communicated/implemented absolute economy-wide emissions reduction or limitation targets to continue to do so and all Parties should aim to do so over time.

It is important to note that currently, under the Convention, only developed countries are required to undertake absolute economy-wide emission reductions. In Cancun in 2010, developing countries agreed to undertake nationally-appropriate mitigation actions (NAMAs), which are to be supported and enabled by technology, finance and capacity-building. Under the NAMAs, it is up to developing countries to determine what kind of mitigation efforts they can undertake; whether they are absolute emission reduction targets, quantified targets relative to business as usual, carbon intensity of GDP or non-economy-wide actions.

b) Will the mitigation reduction targets/or contribution be legally binding?

To answer this question, where the intended NDMCs/NDMC/NDMCCs are 'housed' becomes relevant. The following are the various options in para 9 of Article 3.

There are 2 options – option 1 has the following options:

The mitigation contributions communicated shall be published on:

- an online registry maintained by the secretariat; or
- be in an annex to the agreement; or
- be on the UNFCCC website.

Option 2 is for the mitigation contributions of developed countries to be inscribed in Annex A to the agreement while that of developing countries be inscribed in Annex B to the agreement.

It has become clear from recent news reports that the US will not agree to the emission reduction targets being annexed to the agreement, which will make the targets legally-binding, if the Paris agreement is a legally-binding treaty, as is the case with the annex B of the Kyoto Protocol.

If the US concerns are taken on board, then the emission reduction targets will have to be housed outside of the Paris agreement, as was the case with the Cancun pledges which were contained in an information document maintained by the secretariat on the UNFCCC website, differentiated between developed and developing countries. In Lima last year, Parties agreed that the INDCs that they are to communicate are published on the UNFCCC website.

Given the US situation, it is unlikely for the emission reduction targets or contributions to be made legally binding under the Paris agreement.

c) Issue of progression

On the issue of 'progression', the current text provides that each Party's mitigation contribution will be progressively more ambitious over time. The LMDC has also proposed further additions that the progression of ambition of developing country mitigation contributions will be supported and enabled by enhanced means of implementation over time. Whether developed countries will accept the LMDC proposal is a challenge.

d) Should the mitigation contribution of developing countries be unconditional?

Another important issue to resolve is whether the mitigation contribution of developing countries is unconditional, or at least in part. 'Unconditional' means not conditional upon the provision of finance and technology transfer. In

response, developing countries refer to Article 4.7 of the Convention which provides that “the extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology.”

As regards the INDCs that have been announced, many developing countries have conditioned the full implementation of their mitigation contributions on the basis of the provision of finance and technology transfer. Some have also indicated an unconditional mitigation component alongside an enhanced conditional one.

e) Communication of successive mitigation contributions

Another issue that needs to be resolved relates to the ‘cycle’ or periodicity for the communication of a Party’s contribution.

As pointed out by the UNFCCC Secretariat’s synthesis report of the INDCs that have been submitted, “Most Parties communicated either a 5 or 10 year time frame for the implementation of their INDC. Many of the communicated INDCs refer to periods of implementation up to 2030, while a few INDCs specify a period up to 2025.”

There are proposals on the table for the mitigation contributions to be communicated every 5 years – an option preferred particularly by the European Union (EU). There is also an alternative option for successive contributions to be communicated before the completion of the current implementation cycle. The alternative proposal is from the LMDC to take into account those INDCs, which involve a 10-year timeframe for implementation.

Hence, whether there should be a harmonisation of the successive mitigation contributions will be the subject of debate.

A related question is whether there should only be a ‘cycle’ for mitigation, or if this should also apply to the implementation of other elements on adaptation, finance and technology transfer as well. Many developing countries are concerned that having a ‘cycle’ for mitigation alone would lead to a mitigation-centric approach, with the other elements being disregarded and de-linked

from the mitigation contribution. This relates to the proposal in Article 2 bis referred to above.

f) Should there be a consultative period or an ex ante consideration of the mitigation contributions?

Another vexatious issue relates to whether there should be a consultative period or ex ante consideration of mitigation contributions proposed by Parties, prior to their finalisation.

There are three options on the table in this regard. The first proposal provides that there be a 12-18 month period for a process related to consideration of the mitigation contributions including their aggregate effect in the light of the long-term temperature goal. The second option provides that there be no consultative period or an ex ante consideration, with the third option being that this issue be considered under the element on ‘transparency’.

A concern from a number of developing countries is that this consultation or ex ante consideration of the mitigation contributions could lead to developing countries having to bear the responsibility of filling the emissions gap that result from the very low ambition of developed countries’ emission reduction targets. With developed countries not doing their fair share of the mitigation effort, especially considering their historical emissions, the fear is that developing countries will be pressured to ramp up their mitigation targets and take on more of the burden, with the responsibility shifting from developed to developing countries.

This becomes all the more worrying when there is no consideration of whether the means of implementation for undertaking those efforts are adequate and provided for effectively to developing countries.

See also related discussion below on the issue of global-stocktake below.

g) Should Parties be allowed the use of international carbon markets?

Another issue of controversy is whether Parties will be allowed the use of international carbon markets in reducing their emissions. According to the synthesis report of the INDCs by the UNFCCC Secretariat, “over half of the communicated INDCs indicate that Parties plan to use or are considering the use of market-based instruments from international, regional or domestic schemes, including the clean

development mechanism (CDM).” The Secretariat has examined 119 INDCs communicated by 147 Parties by 1 Oct.

For several years now, even prior to the ADP negotiations, developed countries, with the European Union in particular, and some developing countries have been advancing proposals for new international market-mechanisms under the UNFCCC. Several developing countries have also opposed the creation of new market-mechanisms.

In the negotiating texts under consideration, there are proposals for the creation of new market-mechanisms. There is also an option that does not support any text in this regard, thus opposing the creation of such new mechanisms.

6. Adaptation (Article 4)

Apart from the issue of whether there should be a long-term vision or goal on adaptation as set out above, another issue of importance is whether each Party should or may submit an adaptation communication or undertaking, similar to what is being demanded by developed countries for a mitigation contribution.

There is a proposal from developing countries that the adaptation communication or undertaking is periodically provided, in conjunction with a mitigation cycle. There is an alternative option that there be no text on this.

Likewise, there is a proposal that the communications or undertakings on adaptation be recorded either in a registry or via another modality or be posted on the UNFCCC website. The counter proposal to this is to not have any text in this regard.

These proposals clearly indicate the push by developing countries especially to treat adaptation with the same parity as mitigation.

7. Loss and damage (Article 5)

On the issue of loss and damage, the main bone of contention between developing and developed countries is whether there should be an international mechanism on loss and damage defined under the Paris agreement. There are two options in the text: one from the G77 and China for such a mechanism to be spelt out while the other option reflects the position of the Umbrella Group that does not want any reference to loss and damage as a separate article.

8. Finance (Article 6)

On the issue of finance, the thrust of the developed countries position is to increase the scope of countries to include developing countries who should be ‘donors’ of climate finance by proposing terms in the text like ‘countries in a position to do so’ and to also reduce the scope of developing countries who are recipients of finance under the Convention, and to limit that to the ‘poorest and most vulnerable’. This issue is expected to be highly contentious.

Another problematic proposal from developed countries is contained in the decision text in para 45 in relation to finance which preconditions the support a developing country can obtain upon the communication of its mitigation contribution and the submission of ‘timely reports’ as regards transparency.

9. Technology transfer (Article 7)

Apart from the proposal by developing countries to establish a global goal on technology transfer as referred to above, there is a proposal from India for developed countries to provide financial resources to address barriers related to intellectual property rights (IPRs) and facilitate access to technologies. There is also a proposal from the LMDC for developed countries to provide support for research, development and application of environmentally sound technologies and facilitate their transfer and access to developing countries, including in addressing barriers to access and know-how.

The African Group also has proposed a technology framework to be adopted that will provide direction and guidance in relation to technology assessments, including in identifying options for enhancing access and to address barriers.

These proposals from developing countries are opposed by developed countries with options for no text in the agreement.

10. Capacity building (Article 8)

In capacity building, the G77 and China has called for an international capacity building mechanism to enhance and coordinate capacity building. Developed countries do not want the creation of any new mechanism.

11. Transparency framework (Article 9)

On the transparency framework covering both action and support, the main issue is whether such a framework should be differentiated between developed and developing countries.

Options include a differentiated framework between developed and developing countries building on existing arrangements (proposed by the LMDC); a unified system with built-in flexibility to take into account Parties differing capacities and applicable to all (proposed by the US and New Zealand); a tiered system based on self-differentiation with no backsliding (proposed by the Arab Group) and a framework, building on existing arrangements that takes into account Parties different capacity (a proposal from Brazil and the African Group).

12. Global stocktake (Article 10)

The main issue around the global stocktake is its purpose and scope. The idea is for a periodic stocktake of the implementation of the agreement and there are options as to the purpose: whether to assess the overall/aggregate/collective progress towards achieving the objective of the Convention or the agreement's long-term goal.

On the scope, for developed countries, the stocktaking is primarily for considering the aggregate effect of the mitigation contributions of Parties in light of the long-term mitigation goal, while for developing countries, it is to consider the overall implementation of obligations of Parties (consistent with the differentiated responsibilities), in relation to mitigation, adaptation and the means of implementation.

For the EU, the proposal is for a review process every five years to assess if Parties mitigation contributions are on track to meeting the long-term mitigation goal.

Conclusion

The above are just some of the key issues that reveal how contentious the Paris talks will be. Yet there is a universal desire to make Paris a success. This requires very skilful facilitation that is fair and inclusive as well as transparent. The gaps have to be bridged for the contentious issues.

With only a few negotiating days in Paris, time is not on our side. So, delegates and observers are all gearing up for a lot of pressure and working through late nights in the two weeks ahead.